

Date of Hearing: April 6, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 2558 (Steinorth) – As Introduced February 19, 2016

SUBJECT: Political Reform Act of 1974: San Bernardino County.

SUMMARY: Deletes the sunset date on the authority of the Fair Political Practices Commission to administer, implement, and enforce San Bernardino County's campaign finance reform ordinance, thereby extending this authority indefinitely.

EXISTING LAW:

- 1) Creates the Fair Political Practices Commission (FPPC) and makes it responsible for the impartial, effective administration and implementation of the Political Reform Act (PRA).
- 2) Requires local government agencies that adopt or amend local campaign finance ordinances to file a copy of the ordinance with the FPPC.
- 3) Prohibits a local government agency from enacting a campaign finance ordinance that imposes campaign reporting requirements that are additional to or different from those set forth in the PRA for elections held in its jurisdiction, unless the additional or different requirements apply only to the candidates seeking election in that jurisdiction, their controlled committees or committees formed or existing primarily to support or oppose their candidacies, and to committees formed or existing primarily to support or oppose a candidate or to support or oppose the qualification or passage of a local ballot measure being voted on only in that jurisdiction, and to city or county general purpose committees active only in that city or county.
- 4) Provides that nothing in the PRA shall nullify contribution limitations or prohibitions of any local jurisdiction that apply to elections for local elective office, except that these limitations and prohibitions may not conflict with a specified provision of the PRA dealing with "member communications."
- 5) Provides that payments made for communications to members, employees, shareholders, or families of members, employees, or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure, which are referred to as "member communications," are not contributions or expenditures, if those payments are not made for general public advertising such as broadcasting, billboards, and newspaper advertisements.
- 6) Makes violations of the PRA subject to administrative, civil, and criminal penalties.
- 7) Allows the FPPC, upon mutual agreement between the FPPC and the San Bernardino County (County) Board of Supervisors (Board), to have primary responsibility for the impartial, effective administration, implementation, and enforcement of a local San Bernardino County campaign finance reform ordinance. The County Board must consult with the FPPC prior to adopting or amending any local campaign finance reform ordinance that is subsequently enforced by the FPPC.

- 8) Allows the FPPC, pursuant to 7), above, to investigate possible violations of the County campaign finance reform ordinance and bring administrative actions against persons who violate the ordinance, as specified.
- 9) Allows the County Board and the FPPC to enter into any agreements necessary and appropriate for the operation of 7), above, including agreements for reimbursement of state costs with County funds, as specified. The County Board or the FPPC may, at any time, by ordinance or resolution, terminate any agreement for the FPPC to administer, implement, or enforce the local campaign finance reform ordinance or any provision thereof.
- 10) Requires, if the FPPC enters into such an agreement with the County Board, the FPPC to report to the Legislature by January 1, 2017, the following information:
 - a) The status of the agreement;
 - b) The estimated annual cost savings, if any, for San Bernardino County;
 - c) A summary of relevant annual performance metrics, including measures of utilization, enforcement, and customer satisfaction;
 - d) Any public comments submitted to the FPPC or San Bernardino County relative to the operation of the agreement; and,
 - e) Any legislative recommendations.
- 11) Sunsets the provisions of 7) through 10), above, on January 1, 2018.
- 12) Authorizes a similar arrangement between the FPPC and the City of Stockton, until January 1, 2020.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary.** This bill eliminates the sunset date on the authority of the FPPC to administer, implement, and enforce the County's campaign finance reform ordinance, thereby extending this authority indefinitely. This bill is sponsored by the County.
- 2) **Author's Statement.** According to the author, "By removing the 2018 sunset date from statute, AB 2558 will continue the existing, effective partnership between San Bernardino County and the FPPC for enforcement of local campaign finance ordinances. In 2012, the County established a campaign finance ordinance with contribution limits mirroring those applied to State Senate and Assembly candidates. However, appointing an ethics commission to enforce the ordinance could have created financial and conflict-of-interest challenges to the County, which had suffered various levels of corruption in its local governments over recent years.

"Instead, AB 2146 (Cook, 2012) allowed the County to contract with the FPPC for enforcement of their local ordinance. The FPPC willingly took on responsibility for this enforcement in 2012. This partnership has been successful, cost-effective, and mutually beneficial to the two entities. AB 2558 seeks to continue this arrangement by removing the 2018 sunset date from statute."

- 3) **Background.** Current law, pursuant to AB 2146 (Cook), Chapter 169, Statutes of 2012, allows the County and the FPPC to enter into a mutual agreement that permits the FPPC to enforce the County's local campaign finance reform ordinance. AB 2146 was prompted by several high-profile campaign finance corruption cases in the County, which subsequently developed and enacted a campaign finance reform ordinance.

The County asked for legislative authority to contract with the FPPC to administer and enforce its campaign finance ordinance instead of creating an ethics commission as a means to avoid financial and conflict-of-interest challenges. The County also wished to retain the services of the FPPC to provide for the enforcement and interpretation of the County's local campaign finance ordinance because the FPPC has special skills, knowledge, experience, and expertise in the area of enforcement and interpretation of campaign laws necessary to effectively advise, assist, litigate, and otherwise represent the County on such matters. The FPPC and the County entered into a mutual agreement on January 1, 2013. Prior to AB 2146, the FPPC did not enforce any local campaign finance ordinances.

- 4) **FPPC Report.** Current law requires the FPPC to report to the Legislature by January 1, 2017, the following information:
- a) The status of the agreement;
 - b) The estimated annual cost savings, if any, for the County;
 - c) A summary of relevant annual performance metrics, including measures of utilization, enforcement, and customer satisfaction;
 - d) Any public comments submitted to the FPPC or the County relative to the operation of the agreement; and,
 - e) Any legislative recommendations.

The FPPC submitted its report to the Legislature on March 24, 2016, ahead of its January 1, 2017, deadline due to the Legislature's pending consideration of this bill. The report includes:

- a) **The status of the agreement.** The agreement began with an original contract for calendar years 2013 and 2014 and continued with a subsequent, current contract for calendar years 2015 and 2016.
- b) **The estimated annual cost savings, if any, for the County.** The estimated annual cost savings could not be directly calculated, because the FPPC is the only entity that has administered the County's ordinance. However, the report compared the County's annual payments to the FPPC (the highest of which has been \$55,000) to the biennial budgets of

three ethics commissions (which ranged from \$1 million to \$2.6 million). Based on these figures, the report concluded that the agreement "has resulted in substantial savings to the County."

- c) **A summary of relevant annual performance metrics, including measures of utilization, enforcement, and customer satisfaction.** While the report does not include traditional "performance metrics," it does summarize a number of activities undertaken by the FPPC in executing its contract with the County, including, but not limited to:

- i) Advising candidates for elected County offices and potential contributors in County elections regarding the County's campaign finance reform ordinance and the PRA;
- ii) Proposing revisions to the County's original ordinance to align the ordinance more closely with the PRA;
- iii) Providing training and developing educational materials to assist candidates and campaign treasurers in County elections;
- iv) Conducting audits of 22 candidates and campaign committees; and,
- v) Resolving 23 cases involving committees, candidates, and donors involved in County elections (of those 23 cases, the FPPC prosecuted nine cases resulting in fines, issued warning letters in four cases, and closed 10 cases with no violation found).

- d) **Any public comments submitted to the FPPC or San Bernardino County relative to the operation of the agreement.** The report states that the FPPC and the County are unaware of any formal public comments regarding the operation of the agreement, but did refer to positive public comments made by County supervisors and those regulated by the County's ordinance.

- e) **Any legislative recommendations.** The report states that the FPPC and the County believe no changes need to be made to current law other than eliminating the sunset date. "The statute is sufficient to allow the County to adopt and, if necessary, amend its Campaign Finance Reform Ordinance, in consultation with the FPPC, and for the County and the FPPC to enter into an agreement for the enforcement and interpretation of the ordinance."

- 5) **Related Legislation.** AB 2070 (Harper) authorizes the FPPC, upon mutual agreement between the FPPC and the Board of Supervisors of the County of Orange, to administer and enforce a local campaign finance ordinance passed by the Orange County Board of Supervisors, as specified.

- 6) **Previous Legislation.** AB 1083 (Eggman), Chapter 186, Statutes of 2015, allowed the City of Stockton to enter into an agreement with the FPPC for the FPPC to administer and enforce the City's local campaign finance ordinance.

AB 910 (Harper) of 2015 would have allowed any city or county to enter into an agreement with the FPPC for the FPPC to administer and enforce a local campaign finance ordinance. AB 910 was held in the Assembly Elections and Redistricting Committee.

SB 1226 (Correa) of 2014 would have allowed any city or county to enter into an agreement with the FPPC for the FPPC to administer and enforce a local campaign finance ordinance. SB 1226 was amended to address an unrelated issue.

AB 2146 (Cook), Chapter 169, Statutes of 2012, allowed the County and the FPPC to enter into an agreement for the FPPC to enforce the County's local campaign finance ordinance.

- 7) **Arguments in Support.** The County of San Bernardino, sponsor of this measure, writes, "Through the mutual agreement with the FPPC, the County has benefitted in the following areas:
- Conflict of Interest Elimination – The FPPC is an impartial and independent third party which eliminates potential conflict of interest that could arise from the creation of internal ethics commission by the Board of Supervisors.
 - Cost Savings – Counties that have ethics commissions or other formal entities spend upward of \$3.5 million or more annually to police ethical behavior. Contracting with the FPPC has proven to be a cost effective alternative to an ethics commission and a prudent use of taxpayers' resources.
- "By removing the 2018 sunset date from statute, AB 2558 will continue the existing, effective partnership between San Bernardino County and the FPPC for enforcement of local campaign finance ordinances.
- 8) **Arguments in Opposition.** None on file.
- 9) **Two-thirds Vote.** California voters in 1974 passed Proposition 9, commonly known as the PRA, which created the FPPC and codified significant restrictions and prohibitions on candidates, officeholders, and lobbyists. Amendments to the PRA that are not submitted to the voters, such as those contained in this bill, must further the purposes of the PRA and require a two-thirds vote of each house of the Legislature.
- 10) **Double-Referral.** This bill was heard in the Elections and Redistricting Committee on March 30, 2016, where it passed with a 7-0 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

County of San Bernardino [SPONSOR]
 California State Association of Counties
 Fair Political Practices Commission
 Urban Counties of California

Opposition

None on file

Analysis Prepared by: Angela Mapp / L. GOV. / (916) 319-3958